WP(C) 6168/2007

BEFORE

HON'BLE MR JUSTICE AMITAVA ROY

The subject matter of challenge is the order dated 26.11.2007 passed by the Assam State Election Commission (hereafter referred to as the 'Commission') setting aside the process adopted by the Deputy Commissioner, Darrang on 31.8.2007 reserving different constituencies of local bodies viz. Gaon Panchayats, Anchalik Panchayats and Zila Parishads within the District for women holding the same to be defective and not acceptable. Thereby the Deputy Commissioner, Darrang, Mongaldoi was directed to conduct a fresh process of reservation of different constituencies of such bodies on or before 7.12.2007.

I have heard Mr AB Choudhury, Senior Advocate for the petitioners, Mr M. Bhuyan, learned counsel appearing for the Deputy Commissioner, Darrang, Mangaldoi, Mr MU Mahmud, learned Standing counsel for the Commission and Mr AK Goswami, Senior Advocate for the newly impleaded respondent Nos 5 and 6.

The petitioners' case in brief is that, they are the prospective candidates for the elections for different offices in the Panchayat Institutions located in the District of Darrang. In response to a WT message
issued by the State of Assam to all the Deputy Commissioners of the State for issuing notifications of reservation of seats for SC/ST/Women , the Deputy Commissioner, Darrang by his letter dated 29.8.2007 informed the authorities/parties referred to therein to attend the meeting for the said purpose fixing 31.8.2007 therefor. In the meeting held and presided over by the Deputy Commissioner, Darrang he with the consent of persons drew the lots for five seats to be reserved for women as hereunder :

(1) Lakhimpur Thugabari Zilla Parisad Constituency
(2) Samtilla Zilla Parisad Constituency
(3) Dhumnichoki Parisad Constituency
(4) Dhula Zilla Parisad Constituency
(5) Bechimari Zilla Parisad Constituency

Accordingly the minutes of the proceeding was drawn up and signed by the Deputy Commissioner.

The petitioners have asserted that the respondent No.5 along with others thereafter submitted a representation dated 4.9.2007 before the Commission levelling baseless and unfounded allegations pertaining to the process. The Commission on 4.9.2007 passed an order calling for a report from the Deputy Commissioner, Darrang and in the interim, restrained him from publishing the notification in respect of reservation for seats for women. Eventually,
by the impugned order dated 26.11.2007 , the proceedings of the meeting dated 31.8.2007 was interfered with. Incidentally, on the next date i.e. 27.11.2007 the Commission issued the notification for the ensuing elections . The impugned order has been challenged principally on the ground of lack of jurisdiction and competence of the Commission.

This Court by order dated 4.12.2007 while recording its tentative view with the power of the Commission conferred by Section 114 of the Assam Panchayat Act,1994(hereafter referred to as the 'Act') and Article 243(k) of the Constitution of India might not extend to prevent interference with the impugned order made by the Deputy Commissioner noted that in the meantime, the said authority had issued a notice for redoing the exercise fixing 6.12.2007. It therefore issued the following operative directions :-

> Keeping in mind the totality of the facts of the case and particularly as the poll schedule has already been announced, the Court is of the view that the Deputy Commissioner, Darrang shall proceed with the action proposed on 6.12.2007 .However, the Deputy Commissioner will finalise the matter
> strictly in accordance with the provisions of the Act and the Rules and in his own independent judgment, uninfluenced by the order dated 26.11.2007 passed by the State Election Commission. Thereafter, the decision of the Deputy Commissioner with regard to which particular seats should be reserved for women, at all levels, shall be placed before the Court in a sealed cover. The requisite notificat

ion will be issued by the Deputy Commissioner only after approval of the Court is accorded to the decision of the Deputy Commissioner.

Mr Bhuyan, learned counsel for the Respondent No.3 i.e. Deputy Commissioner, Darrang has produced the relevant records in a sealed cover and has apprised this Court that in the meantime, the process has been redone by the said authority on 8.12.2007 reaffirming the decision taken on 31.8.2007.

Mr Choudhury with reference to Rules 6,7 and 8(2)(c) of the Assam Panchayat (Constitution) Rules,1995 (hereinafter referred to as the 'Rules') as well as Section 114 of the Act submits that the Deputy Commissioner having been entrusted with the power to decide on the reservation of seats for women by drawing lots, the Commission has no jurisdiction to interfere with his decision and therefore, the impugned order is non est in law. According to him, the order having been passed before the notification of the elections , the bar under Article 243(o) of the Constitution of India is also not attracted. The learned Senior counsel has argued that in any case, the challenge if entertained , would not interfere with the process of elections.

Mr Mahmud in reply, has argued that having regard to the language used in Article 243(k) and Section 114(1) and (4) of the Act, the Commission has plenary powers in all matters pertaining to the preparation of electoral rolls as well the conduct of elections to the Panchayats and therefore the plea to the contrary is misconceived. He has urged that as the notification for the elections has been published in the meantime , the instant petition on the face of the records is not entertainable in law. The Commission being a constitutional body , no limitation on its powers as suggested can permissibly be imposed, more particularly, the Deputy Commissioner of the
District being under its control during the period of elections.

Mr Bhuyan with reference to the records and Rule 6(4)(d) of the Rules has argued that the Deputy Commissioner, Darrang as permitted by this Court after issuing notices to the representatives of all recognized regional and national political parties had
reaffirmed its decision taken in the meeting held on 31.8.2007 and that therefore, reservation in terms thereof stands. According to him, the meeting conveyed on 6.12.2007 could not be held as the notice therefor was not in accordance with the mandate of Rule 6(4)(d) of the Rules.

Mr Goswami appearing for the newly impleaded respondents while submitting that the decision taken by the Deputy Commissioner, Darrang on 8.12.2007 is not in conformity with the letter and spirit of the order dated 4.12.2007 of this Court , has urged that the expression conduct appearing in Section 114 of the Act has to be provided an extended meaning, the underlying objectives of entrusting it(Commission) with the responsibility to administer the process being to ensure free and fair election. According to him, having regard to the role prescribed for it, the Commission in case it is satisfied that any step taken by any authority for conducting the elections is
glaringly illegal, it would be its solemn duty to intervene and take necessary remedial steps.

The pleadings on records and the rival submissions have been duly considered. That the Commission has been entrusted with the duty of preparing the electoral rolls and conducting the elections to the Panchayat institutions is obvious from Article 243(k) and Section 114 of the Act .

While dwelling on the purport, scope and ambit of Article 324 of the Constitution of India , the Apex Court in Special Reference No.1/2002 (Gujarat Assembly Election matter)(2002) 8SCC 237 had held that the general power of superintendence direction control and conduct of elections vested in the Election Commission is subject to any law either made by the Parliament or State Legislature as the case may be which is also subject to the provisions of the Constitution. It enunciated that the word election is to be interpreted to include all steps necessary for holding the elections. It propounded that the expressions superintendence , control , direction conduct of all elections to be construed in the broadest terms.

In the above view of the matter, I am of the opinion that the Commission as comprehended in Article 243(k) with identical status at the state level and vested with same powers and duties was within its authority and competence to pass the impugned order. The constitutional empowerment of the Commission in absence of any statutory provision to the contrary cannot be permitted to be moderated as pleaded by the petitioners.

The petition though has been filed challenging the order dated 26.11.2007 of the Commission with the publication of the notification of the elections on 27.11.2007, the impugnment as on date having regard to the underlying objectives of the bar under Article 243(o) of the Constitution of India, is no longer entertainable in law. Any other view would not only leave the absoluteness of the bar truncated and enfeebled, it would also lead to an anomalous state of affairs. With the election notification the assailment relating to a cause of action arising prior thereto would thus be rendered non est.

Reading between the lines comprising the operative portion of the directions of this Court, it is difficult to conclude that the Deputy Commissioner, Darrang was thereby required to take a decision in a particular manner. The records reveal that the said authority acting in terms of Rule 6(4)(d) of the Act issued notices to the concerned representatives of all recognized regional and national political parties and on a consensus recorded reiterated of the decision taken on 31.8.2007 holding that no fresh drawal of lots was called for. This decision incidentally is not in challenge as of date. This Court had left the Deputy Commissioner, Darrang to repeat the exercise in accordance with the provisions of the Act and the Rules without being influenced by the order dated 26.11.2007 of the Commission. In the above premise, the plea that the minutes of the meeting held on 8.12.2007 were not in conformity with the order dated 4.12.2007 of this Court is not tenable.

In view of the above, the petition fails . However, in absence of any challenge to the decision of the Deputy Commissioner , Darrang taken on 8.12.2007 reserving the seats for women reiterating its decision taken on 31.8.2007, the respondents are left at liberty to act accordingly. No costs.